

NYC Artificial Intelligence Law on Employment Practices Takes Effect January 1, 2023

Susie Cirilli's Employment Law Blog

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On November 10, 2021, the New York City Council passed Int. No. 1894-A Relating to Automated Employment Decision Tools. This law is effective as of January 1, 2023. As 2023 creeps closer, prudent NYC employers will take steps to ensure that they are ready for the enactment. This blog takes a deep dive into the nitty gritty of the law. Let's get started....

WHAT DOES THE LAW PROHIBIT?

Before we can discuss how this law applies, let's start with what the law actually says.

The law prohibits employers or an employment agency from using an automated employment decision tool to screen a candidate or employee for an employment decision, unless:

- The tool has been the subject of a Bias Audit;
- The Bias Audit has been completed no more than 1 year prior to the use of such tool;
- A summary of the results of the most recent bias audit are made publicly available on the employer's website *prior to the use of such tool*.

This is a fairly broad bill, and one that requires a bit of unpacking before understanding the responsibilities of the employers. Unfortunately, the law, as written, does not give much guidance for employers. Let's attempt to unpack what the bill does provide.

WHAT DO THESE WORDS MEAN?

Before discussing what this means for employers, let's look at some definitions:

- **Automated Employment Decision Tool ("AI Tool")** The entire law revolves around *automated employment decision tools*. The law provides the following definition:

...any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decision that impact natural persons.

- **Bias Audit.** As noted above, the law requires annual Bias Audits of the AI Tool. As seen below, the definition leaves much to be desired and offers little guidance to employers.

The Bias Audit must include testing of the AI Tool to assess the tool's disparate impact on persons of any Component 1 Category.

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This is semi-helpful. The law applies to certain employee categories as identified by the EEOC. However, even a cursory look at the Component 1 Category reveals that the list is lengthy. It makes the most sense for employers to act as if the law applies to all hires, instead of making judgment calls on each new position.

▪ **Employment Decision.** This definition turns “employment decision” into a verb and reads as follows:

The term “employment decision” means to screen candidates for employment or employees for promotions within the city.

This definition provides a little more insight. First, the law applies to internal promotions. Second, the law only applies to employment decisions made **within the city**. This means that the law only applies to hiring and promotions that occur within New York City- not outside of the city.

REQUIRED NOTICES

This law requires employers to provide notices to employees and candidates. Below is the text of the law along with our commentary:

Any employer or employment agency that uses an [AI Tool] to screen an [employee/candidate] for an employment decision shall notify each such employee or candidate who resides in the city of the following:

[NOTE: The law only requires employers to provide notice to individuals who live in New York City.]

(1) That an automated employment decision tool will be used in connection with the assessment or evaluation of such employee or candidate that resides in the city.

[NOTE: Again, the notice only needs to be directed to individuals who live in New York City.]

(2) Such notice must be made no less than 10 business days before such use, and allow a candidate to request an alternative selection process or accommodation.

[NOTE: Employers may want to contemplate providing such notice in the job postings, promotion announcements etc.]

(3) The job qualifications and characteristics that such [AI Tool] will use in the assessment of such candidate or employee.

(4) If not disclosed on the [employer’s website], information about the type of data collected for the [AI Tool], the source of such data, and the [employer’s] data retention policy shall be available upon written request by a candidate or employee. Such information shall be provided within 30 days of the written request.

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The bottom line is that employers must be aware of these notice requirements and adhere to same. This is a sweeping law that has great impact on the hiring/promotion process in NYC. It is important to note that employers who use compliant tools may still run afoul of the law.

PENALTIES AND CIVIL REMEDIES

Violations of this law carry penalties and afford employees/candidates the right to bring civil actions. It is crucial for employers to understand this law and prepare for the new year accordingly.

ATTORNEYS MENTIONED

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